



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAR 28 2014**

Office: NEWARK, NJ

[Redacted]

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted and the prior AAO decision will be affirmed. The underlying application will remain denied

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. He is the derivative beneficiary of an approved Petition for Alien Worker (Form I-140). On that basis, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), which was subsequently denied on discretionary grounds. The applicant filed an appeal of the Form I-485 denial, which was rejected by the AAO on May 7, 2013 for lack of jurisdiction. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director (denying Form I-601)*, dated September 3, 2009.

On appeal, the AAO concluded that although the applicant established that extreme hardship would be imposed on a qualifying relative in the event of relocation, the applicant failed to establish that extreme hardship would be imposed on a qualifying relative in the event of separation, and the AAO dismissed the appeal accordingly. *See Decision of the AAO*, dated May 7, 2013. In response, counsel for the applicant filed the present motion to reopen and reconsider.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel contends that the AAO decision demonstrates clear error and abuse of discretion in light of the evidence in the record and additional supporting evidence submitted on motion, and that the applicant's spouse would experience extreme hardship in the scenario of separation as well as relocation. Counsel supplements the record on motion with a new affidavit from the applicant and his birth certificate, a psychological evaluation, a letter from the applicant's spouse's physician, medical records and a naturalization certificate for the applicant's mother, a property deed, and a 2012 income tax return. Counsel refers to a number of extreme hardship-related cases in his supporting brief. The AAO finds that the applicant has met the requirements of 8 C.F.R. §§

103.5(a)(2) and 103.5(a)(3), and the motion will be granted and the application reopened and reconsidered.

In addition to the supplemental evidence described above, the record contains but is not limited to: Forms I-290B; various immigration applications and petitions; a 2009 hardship affidavit from the applicant's spouse; letters from a physician concerning the applicant's sons; birth and marriage documents; and country conditions documents for Pakistan. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that while seeking admission into the United States on May 23, 1999 from Canada at the [REDACTED] the applicant told the inspecting officer that he had never attempted to apply for an immigration benefit. The record shows, however, that on or about November 1, 1990, the applicant filed an Application for Status as a Temporary Resident (Form I-687), which was administratively closed in 2007. Subsequently, during the applicant's adjustment of status interview on June 11, 2009, he stated under oath that he never owned any business in the United States. This is contrary to public records which show that the applicant was a proprietor of [REDACTED] as early as 1997. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, counsel concedes inadmissibility on motion, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a

favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO's previous discussion on appeal concerning extreme hardship factors and related case law are hereby incorporated by reference.

The AAO found on appeal that the applicant has established that his qualifying relative spouse would experience extreme hardship if she were to relocate to Pakistan to be with him. The AAO will not disturb this finding on motion. Thus with regard to extreme hardship, we look only to whether it has been established on motion that separation-related hardship to the applicant's spouse, when considered cumulatively, rises to the level of extreme.

The AAO found on appeal that assertions of emotional hardship in the applicant's spouse's affidavit were alone insufficient to establish that she would suffer extreme separation-related hardship. On motion the record has been supplemented with a letter by [REDACTED], and an evaluation by [REDACTED] indicates that the applicant's spouse has been treated in his office since July 2006 and suffers from anxiety and depression for which she has been prescribed an antidepressant. [REDACTED] writes that the applicant's spouse is currently experiencing a major depressive episode. [REDACTED] relays from the applicant's spouse that she and the applicant fell in love many years ago in Pakistan, were separated for years when the applicant came to the United States, and finally married in March 1997. The applicant's spouse indicates that after more than 15 years of marriage, she would be unable to survive without the applicant and would be left with a shattered family and no life. [REDACTED] maintains that in the event of the applicant's removal, his spouse would be at risk for continued physical and emotional decline. She emphasizes that the significant depression the applicant's spouse is enduring is a serious, life-threatening condition that can worsen, lead to further physical deterioration or, to possible suicide, something the applicant's spouse has contemplated. The applicant's spouse has expressed great concern for the applicant's safety in Pakistan, as he is a member of the Shiite Muslim religious minority and is known to have married her, a Sunni Muslim, without her family's consent. Country conditions documents in the record demonstrate that sectarian violence is a widespread and serious problem in Pakistan and that honor killings and other punishments are not unusual in the case of mixed marriages. [REDACTED] indicates that the applicant's removal would result not only in risk to his well-being, but in angst to the applicant's spouse and her continued emotional and physical decline. Counsel asserts that if the applicant is removed, his spouse would alone be responsible to care for the applicant's mother who has resided with them for about 10 years and suffers a number of medical ailments. Dr. [REDACTED] writes that caregiving itself is a significant source of stress for those who look after the ill, and thus counsel avers that the added stress of caring for her ill mother-in-law by herself would exacerbate her emotional and physical hardships. Evidence in the record does not establish the length of time the applicant's mother has resided with him and his spouse, and the possibility of her other sons, who reside in New York and Texas, assuming responsibility for their mother's care has not been addressed in the record. Nevertheless, that the applicant's spouse would likely continue to care for her mother-in-law in the applicant's absence has been considered in the aggregate along with all other assertions of hardship.

Assertions have been made concerning the applicant's spouse's physical health. A September 2012 medical record from [REDACTED] shows that the applicant's spouse was

diagnosed with mixed hyperlipidemia, unspecified hypothyroidism, unspecified vitamin D deficiency, other vitamin B12 deficiency anemia, and acute pharyngitis. [REDACTED] indicates that the applicant's spouse has also been under the care of a neurologist since 2006 when one side of her body became numb. While the record does not show that the applicant provides any type of medical-related services or health insurance for his spouse, or that his removal would adversely affect the conditions listed, the applicant's spouse's physical health has been considered in the aggregate along with all other assertions of hardship.

Counsel asserts that the applicant's spouse would experience extreme financial hardship in the applicant's absence and submits a deed showing that they co-own a home, and a copy of their 2012 income tax return. While counsel contends that the applicant's spouse does not earn enough to support herself, her children (20-year-old [REDACTED]) and her mother-in-law without the applicant's financial contribution, the evidence in the record does not sufficiently establish that this is the case. The applicant's mother is not listed as a dependent on the tax return, the combined income is not differentiated by earner, and no IRS form W-2 wage and tax statements have been submitted. Letters from [REDACTED] indicate that on June 12, 2007 the applicant's spouse was earning \$74,775 annually, and on August 13, 2009 she was being paid a salary of \$55,016 per year plus full medical insurance coverage. Her current salary and that of the applicant are not clearly delineated in the record. The tax return indicates that in addition to the \$60,000 wages/salaries earned by the applicant and his spouse in 2012, they earned \$74,825 in rental real estate, royalties, partnerships, S corporations, trusts, etc. There is nothing in the record to indicate that this additional source of income would no longer be available to the applicant's spouse in the applicant's absence. Moreover, the record contains no budget or other documentary evidence specifying the family's current expenses from which an accurate determination might be made as to whether the applicant's spouse would suffer economic hardship in the applicant's absence. The AAO recognizes that the applicant's spouse would likely experience some reduction in income as a result of the applicant's removal, but the evidence submitted is insufficient to establish that she would be unable to meet her financial obligations in his absence.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including her lengthy marriage to the applicant of more than 16 years; her emotional dependence upon the applicant, her significant mental health condition and the adverse impact of separation on her health and well-being; the likely exacerbation of her psychological condition as a result of constant worry for the applicant's safety in Pakistan where her fears are corroborated by country conditions reports; the responsibility, to some degree, of taking care of the applicant's mother in his absence; the reduction in income, to some degree, resulting from the applicant's removal; and the permanent nature of the section 212(a)(6)(C)(i) bar. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the separation-related challenges the applicant's spouse would face, meet the extreme hardship standard.

Assertions have been made on motion that the applicant's U.S. citizen mother would suffer extreme hardship if the applicant is removed. While assertions concerning separation-related hardship have been made, there are no assertions addressing any hardship she would experience were she to relocate to Pakistan. The AAO will not analyze the claim of extreme hardship to the applicant's mother as extreme hardship to the applicant's spouse has now been established.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

In denying the Form I-485, the field office director found that the negative factors in the applicant's case substantially outweigh the positive, and that the positive factors appear limited to his lawful permanent resident spouse, U.S. citizen children, and absence of a criminal record. *See Decision of the Field Office Director (denying Form I-485)*, dated September 3, 2009. In considering the Form I-601, the AAO finds that additional favorable factors include extreme hardship to the applicant's lawful permanent resident spouse as a result of his inadmissibility, and other family ties to the United States including the applicant's brothers, and his mother who appears to reside in the home and care of the applicant and his spouse.

The unfavorable factors are the applicant's immigration violations, including multiple misrepresentations made to secure immigration benefits, several committed while he was being confronted about his previous misrepresentations. These are detailed by the field office director in her denial of Form I-485 and are evidenced in the record. Other immigration violations include the applicant's periods of unauthorized presence and employment. As noted by the field office director, there is also no documentary evidence in the record showing that the applicant ever paid taxes in the United States from at least 1997 to 2007, despite engaging in unauthorized employment and being listed in public records as proprietor of a business in the United States called [REDACTED]. Despite this public record, the applicant stated to an immigration officer, while under oath on June 11, 2009, that he never owned any business in the United States. This is reflective of the applicant's history of questionable veracity and failure to cooperate with immigration authorities. The applicant's multiple immigration violations including misrepresentations made over numerous years and occasions, his lack of candor and refusal to disclose even publically discoverable facts, as well as his failure to pay taxes in the United States for at least one decade, are significant unfavorable factors. A further significant negative factor is the fact that the field office director found the applicant ineligible to adjust status on discretionary grounds, a basis other than inadmissibility. As the applicant has been found ineligible to adjust status on a basis other than inadmissibility, no purpose would be served in granting a waiver of inadmissibility as he would remain ineligible to adjust status.

The AAO finds that the negative factors in the applicant's case outweigh the positive and that he has failed to establish that a favorable exercise of discretion is warranted. The appeal of the denial of the applicant's waiver application must, therefore, remain dismissed and the prior AAO decision affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted but the prior AAO decision is affirmed. The waiver application remains denied.